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ORDINANCE NO. 2008 - 060

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, PERTAINING TO THE REGULATION OF NIGHTCLUBS; PROVIDING SHORT TITLE; PROVIDING DEFINITIONS; PROVIDING A SECURITY FEE; PROVIDING ADDITIONAL SECURITY MEASURES; PROVIDING ENFORCEMENT AND PENALTIES; PROVIDING PATRON AGE RESTRICTIONS; PROVIDING POLICE SUPERVISION; PROVIDING RIGHT OF ENTRY FOR PURPOSE OF INSPECTION; PROVIDING EXEMPTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR APPLICABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING CAPTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is within the police power of Palm Beach County to regulate the hours of service of alcohol in the interest of the health, safety and general welfare of the residents of the County; and

WHEREAS, the County recognizes that Section 562.14, Florida Statutes, allows counties to restrict the hours of sale, service, and consumption of alcoholic beverages; and

WHEREAS, Section 562.11, Florida Statutes, prohibits the sale of alcoholic beverages to individuals under the age of twenty-one (21); and

WHEREAS, because the service and consumption of alcohol in certain types of establishments creates public health, safety, and welfare concerns, the County desires to adopt an ordinance concerning such service and consumption of alcoholic beverages; and

WHEREAS, the Board of County Commissioners of Palm Beach County has determined that the presence of security officers and Sheriff deputies will best protect the safety of patrons and employees of nightclubs; and

WHEREAS, the Board of County Commissioners of Palm Beach County has determined that the public health, safety and welfare will be best served by prohibiting the admission of persons under the age of twenty-one (21) subject to limited exceptions, to nightclubs, as defined herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. SHORT TITLE:

This Ordinance shall be entitled the "Palm Beach County Nightclub Security Ordinance".

Section 2. DEFINITIONS:

The following words and phrases when used in this Ordinance shall have the meanings as set out herein:

1. Nightclub means any commercial establishment at which alcohol is sold and consumed, and which, at any one time, is determined to be a nightclub by application of the factors set forth in this definition. If a commercial establishment could reasonably be classified as either a nightclub or some different use, it shall be deemed a nightclub for purposes of this Ordinance. In determining whether an establishment is a nightclub, the following factors shall be considered:

(a) If one of the following two factors is satisfied, then the establishment is a nightclub:

(1) The establishment charges a cover charge, door charge, required contribution, or one time membership fee which is paid at the door; or

(2) The establishment has a minimum drink purchase requirement.

(b) If neither of the factors listed in subsection (a) above are present, then if three of the following five factors are satisfied, the establishment is a nightclub:

(1) There is a dance floor or other open area used by patrons for dancing or for viewing of live entertainment (such dance floor or open space may be established by the temporary removal or rearrangement of furniture or tables);

(2) The establishment is open to the public between 11:00 p.m. and 8:00 a.m. on any day of the week;

(3) The maximum capacity of the establishment, as set by the fire officials through fire, building, structure, and other relevant laws and ordinances, is over 150 persons. The facility may restrict its capacity to a lesser number;

(4) Advertisements for the establishment routinely describe specific entertainment events or engagements (e.g. "House Party Saturday Night"; "DJ Thursday night"; "Rock Band tonight"); or

(5) The establishment features a platform or musical staging area used in connection with performances or entertainment.

(c) A nightclub is distinct from a restaurant that sells alcohol when the establishment cannot qualify for a "Consumption on Premises, Special Restaurant Exemption" pursuant to state law and is exempt from the provisions of this Ordinance.

2. Owner, except when specific reference is made to the owner of the physical location or premises, it shall include the owner, operator, manager, promoter or other person having supervision over a nightclub as defined herein.

3. Parking lot means an area given, leased, rented or otherwise used by patrons and staff to park vehicles.

4. Promoter means a person or the legal entity who assumes the financial responsibilities of a nightclub, including but not limited to, contracting with the principals, renting the site and collecting the gate revenues.

5. Security Officer means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property.

6. Sheriff means the Palm Beach County Sheriff.

Section 3. SECURITY /LAW ENFORCEMENT PRESENCE:

Nightclubs shall be required to comply with the security/law enforcement presence as follows:

1. All nightclubs located in the unincorporated area shall provide interior and exterior security personnel of a number equaling one security officer per each occupancy level of 150 occupants or any portion thereof or as determined by the Sheriff's Office, with cause. For example, if the occupancy level of an establishment is 500, a total of four interior and exterior security personnel are required. If the occupancy level is 150, a total of one interior and exterior security personnel is required. Security officers must complete a security officer training course approved by the Sheriff's Office which deals with acting as a security officer in a nightclub that serves alcohol. Security Officers must possess proof of completion.

2. Additionally, the Owner shall, at its expense, provide the required minimum number of off-duty Sheriff deputies, as approved by the Sheriff or his designee. The Sheriff or his designee may periodically review and adjust its recommendation as to the required staffing of off-duty Sheriff deputies, based on the availability of off-duty Sheriff deputies and current security conditions at the nightclub and within its vicinity. Such deputies shall commence service at 10:00 p.m. or as designated by the Sheriff's Office each evening the nightclub is open to the public later than 10:00 p.m. and ending one hour after closing of said nightclub or as designated by the Sheriff's Office. Nightclubs shall be required to employ a minimum of two Sheriff's deputies and one additional Sheriff's deputy thereafter for each 150 persons or any portion thereof of the maximum capacity of the premises or as designated by the Sheriff's Office.

3. This section shall not apply to nightclubs that have had less than 4 incidents which required a law enforcement response within the preceding calendar year, and which are attributable to events held at the nightclub.

Section 4. ADDITIONAL SECURITY MEASURE:

Nightclubs shall provide exterior security lighting of a minimum illumination of an average of 1.5 horizontal and vertical footcandles measured at six feet above grade level throughout the parking area. Pursuant to Ordinance 2005-041, the maximum illumination at the property line of an adjoining residential parcel or public right-of-way is 0.33 horizontal and vertical foot-candles measured at six feet above grade level. Said illumination likewise measured at the property line of an adjoining non-residential parcel, shall not exceed 3.0 horizontal and vertical footcandles measured at six feet above grade level.

Section 5. PATRON AGE RESTRICTION:

It shall be unlawful for persons under the age of 21 to patronize, visit, loiter, be admitted or allowed access, in any nightclub, except as hereinafter provided. This restriction shall not apply to:

1. Persons employed by or at the nightclub;
2. A nightclub, during any time period in which it is not serving or selling alcoholic beverages to the public, or allowing alcoholic beverages to be consumed on

its premises, provided that, before anyone under the age of 21 is admitted into the nightclub, all alcoholic beverages previously served to customers or being consumed by customers, are removed from customer access and otherwise discarded, and the nightclub's entire inventory of alcoholic beverages is properly secured from public access. The sale, service or consumption of alcoholic beverages may not resume until all persons under the age of 21 have vacated the premises; or

3. Members of the military or armed services with proper military identification which reflects that they are currently on active duty with a branch of the United States military.

4. It may be a defense to alleged violations of this section that the person under the age of 21 obtained access despite the owner's reasonable efforts to prevent such access, or through fraudulent identification, and the business used reasonable efforts to prevent the use of fraudulent identifications. "Reasonable efforts" shall include, but not be limited to, employees properly checking identification cards at the entrance to the subject establishment. For purposes of this section, "identification cards" are defined as official Federal, state or local government issued identification cards. Under these circumstances, only the persons who gained access to the alcoholic beverage establishment by presenting fraudulent identification shall be considered in violation of this section.

Section 6. ENFORCEMENT AND PENALTIES:

It shall be unlawful for any person to violate any of the provisions of this Ordinance.

Code Enforcement Notices of Violation shall be issued to any nightclub that fails to meet any of the illumination requirements established in Section 4 of this Ordinance. The Notice of Violation shall be left with the owner, proprietor, or highest-ranking employee then on the premises. An additional copy of the notice will also be mailed via U.S. mail, certified, return receipt requested, to the nightclub at the street address of the nightclub. Proof of delivery by either of these two methods (hand delivery or certified mail) shall be sufficient to establish receipt by the owner.

Violations of all other sections of this Ordinance shall be punishable, upon conviction, pursuant to F.S. Section 125.69(1), by a fine not to exceed \$500.00 per

violation or imprisonment not exceeding sixty (60) days, or both such fine or imprisonment. Each day of violation of the provisions of this section shall constitute a separate offense.

In addition to the sanctions contained herein, the County shall take any other appropriate legal action, including but not limited to, cease and desist orders, other administrative action and requests for temporary and permanent injunctions to enforce the provisions of this Ordinance. It is the purpose of this Ordinance to provide additional cumulative remedies.

Section 7. POLICE SUPERVISION:

The presence of any Sheriff's deputy at any nightclub shall not relieve the Owner thereof, or any of his employees, from the responsibility of adhering to the provisions of this Ordinance or for violations of any law or ordinance or from the responsibility of maintaining decency and order in said nightclub.

Section 8. RIGHT OF ENTRY FOR PURPOSE OF INSPECTION:

All Sheriff's deputies shall have free access to nightclubs when open for business for the purposes of inspection and to enforce compliance with the provisions of this Ordinance.

Section 9. EXEMPTION:

The provisions of this Ordinance shall not apply to Adult Entertainment Establishments regulated pursuant to Palm Beach County Code Chapter 17, Article V.

Section 10. LIMITATION OF LIABILITY:

Neither the Sheriff's Office or the County shall be under any obligation or duty to any person hereunder by reason of this Ordinance. The Sheriff specifically disclaims liability for any damages which may be caused by failure to provide security.

Section 11. APPLICABILITY:

This Ordinance shall apply in unincorporated Palm Beach County only.

Section 12. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 13. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 14. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word ordinance may be changed to section, article, or other appropriate word.

Section 15. CAPTIONS:

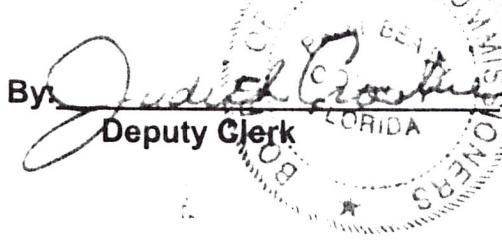
The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 16. EFFECTIVE DATE:

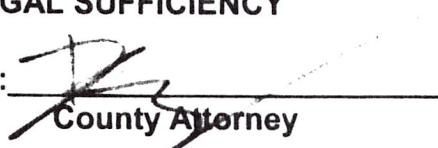
The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 16th day of December, 2008.

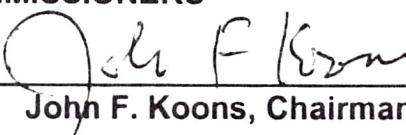
SHARON R. BOCK, CLERK & COMPTROLLER

By: 
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: 
County Attorney

**PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: 
John F. Koons, Chairman

STATE OF FLORIDA, COUNTY OF PALM BEACH,
I, SHARON R. BOCK, CLERK & COMPTROLLER
of PALM BEACH COUNTY, do hereby certify that the foregoing instrument was
signed and filed on December 16, 2008 at 11:21 AM.
Dated at Palm Beach, Florida on 1/12/09.
By: 
Diane Brown

EFFECTIVE DATE: Filed with the Department of State on the 22nd day of
December, 2008.